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# State Efforts to Site a Special Waste Facility

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# **Siting new disposal facilities in Maine in the 1990s**

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*The seeming paralysis in siting waste disposal facilities and other new facilities in Maine and other states underscores the difficulty of designing and implementing processes that will safeguard the environment and human health while sustaining economic development. Sherry Huber, director of the Maine Waste Management Agency, highlights issues that have surfaced during the initial efforts of MWMA to site a special waste landfill. Don Meagher of the Eastern Maine Development Corporation describes the lessons learned from his involvement in an effort to site a demolition debris facility. Bob Dunning, a Bridgton facility siting activist, offers some suggestions to government and industry officials on how to communicate better with facility siting opponents. Finally, Michael Cannata, chief engineer of the New Hampshire Public Utilities Commission, details the steps taken by New Hampshire's leaders to ensure a responsive facility siting process for new energy projects.*

## **State efforts to site a special waste facility**

*by Sherry Huber, Director, Maine Waste Management Agency*

The agency I direct, the Maine Waste Management Agency, has received a great deal of attention lately. Unfortunately, most of that press was because we failed in our initial search to find a suitable site for a landfill for incinerator ash and other special wastes. That does not mean that we are done; to the contrary, we are moving ahead with both the siting process and other responsibilities.

### **Mission of MWMA**

The Maine Waste Management Agency is a hybrid organization. We really do not regulate anybody. We work hand-in-glove with the Department of Environmental Protection (DEP) because we share their concern that waste be managed to protect the environment and human health. But we do not have powers to unilaterally determine how that occurs. In fact, in the process of siting disposal facilities, we become like a private sector developer. We come under the aegis of the Department of Environmental Protection. We pay the same costs that the private developer would, and we submit all the paperwork that the private developer does. That is an interesting place to be. I have not been there yet, but I look forward to that. The application process may teach us how the approval process might be improved, perhaps in areas that others have been complaining about for years. Critics of the process may have a friend in Augusta if that is the case.

I would like to relate how the agency operates. That will provide a sense of where some answers to our current problems lie. I will begin briefly with the history of the Maine Waste Management Agency. In many ways, I think the agency exists because of NIMBYs - the not-in-my-backyard folks. The Maine Waste Management Agency exists because of concerns that people have about siting, and in particular their concern with the private sector. The perception has been that the private sector developer was totally motivated by profits, probably was unscrupulous, went

around in the dark of night buying up land, and then dropped this bombshell on some innocent community. It was a get-rich-quick scheme for somebody who had some money to invest. That was a major reason that the Solid Waste Management Act of 1989 was enacted. The act established the agency as a bit of an experiment, one that I think has not yet been completed. (To our critics who would dismiss the experiment as a failure, I would suggest that if you have a few hours left in the lab, you should complete that part of the experiment before you pronounce whether or not you were successful.)

The agency was set up to incorporate a larger state role in waste management. That did not allow the municipal level to escape its ongoing responsibility for managing waste. The act supplements that responsibility with, hopefully, more state financial assistance and more state technical assistance, not only in disposal, but also in waste reduction and recycling. So, we were given that additional responsibility at the state level and were set up as an autonomous agency in state government I was appointed by the governor and report to him.

We are independent of any other agency or department and we essentially do three things: First, to find out what is going on in waste management, we have a planning office. Second, we work to make waste reduction and recycling an operative policy in this state. We are achieving our goals there. This year I believe that we have achieved the twenty-five percent goal on a state-wide basis, and I expect that it will be closer to thirty percent. Our towns and cities are doing a super job. The markets for recycled products are very weak, but with a little patience we will get by that weakness. Third, we have responsibility for disposal and siting. Needless to say, that has proved to be the most difficult. It has also set us up in some interesting relationships.

In the state/local relationship, as Don Meagher of Eastern Maine Development Corporation reminded me, we were supposed to be White Hats coming in after the Black Hat developer had gone away, and to be embraced by the citizens of Maine's communities. It has not happened that way. Although I am really not paying much attention to it yet, there is also a state and federal relationship in waste management. This relationship is interesting because there is no agreement on the degree to which this will ever become a major federal responsibility. Although we can talk about how we might get to federal involvement, we essentially have to take our own responsibility at present. Nobody else is going to do it for us, and as far as I can tell, no one is going to pay us to do it with federal funds.

In terms of the public/private relationship, the legislation requires that henceforth, and this is now almost three years old, new disposal facilities will be only publicly-owned. A prohibition was placed on any new privately-owned facilities. They can expand, but there are only two of them in the state now. We have effectively created a monopoly. This is very unique: I do not know another state where only publicly-owned facilities are permitted. I have already explained that the profit motive and the unscrupulousness of the private sector developer were perhaps the major rationale. It was assumed that the state would have a public interest, and that its deep pockets would be around longer than any fly-by-night developer. None of these arguments, however, have proved to be very compelling for the citizens of any communities that we have considered as potential sites for new disposal facilities.

The MWMA has a number of tools to help site a facility. In contrast, the siting process in low-level radioactive waste has been given virtually no tools, and they must do it by convincing people somewhere in the state that this is an appropriate use of a particular piece of land. We play under different rules. We have a Facility Siting Board, which approves the continued study of any potential state-owned site. It is very much like the Board of Environmental Protection in terms of its organization and its decision-making powers. We also have the ability to award significant community benefits, or compensation; that is, ways to pay a community for taking on this LULU, this Locally Unwanted Land Use. Many states have not reached this point, but it was deemed desirable in Maine. We have not reached the point of negotiating compensation with a community yet, but I would hope that it would be of some help to pay them for taking on an activity that the rest of us would rather not have. It seems reasonable enough.

We have the ability to issue up to \$50 million of revenue bonds without going back to the legislature for permission. Those will be repaid by the users of the facility and that seems very appropriate, too. Why should the general public be funding a private enterprise? The user will pay the full cost of a facility, so that our revenue bonds can be used to purchase a site and later be repaid. Last, but not least, the agency was given the right of eminent domain. Apparently the legislature felt that siting a facility was of such importance, with the need comparable to a highway or some other public project, that the right of eminent domain, used carefully and judiciously, would be appropriate if a willing seller could not be found. The Low-Level Radioactive Waste Authority has few, if any, of these tools. It has a lot more money, but it lacks eminent domain. Basically, it must go through a lot of hoops to be accepted in a community.

Before we began a screening process for new sites, it was required, and rightly so, that we develop a solid waste management and recycling plan. This was a very public process with a lot of help from interested people in the state. We also identified and prioritized those types of facilities for which there would be a need in the state. We are required to update that analysis every two years. We have spent a lot of time looking at capacity needs, because it keeps changing. It is very important that we know exactly what we have to do, what the requirements are, and that we act accordingly.

We decided, and continue to believe, that special waste, which includes incinerator ash, was the waste most in need of a disposal facility. I suspect we will modify our position somewhat in the next phase of our process to include both municipal solid waste and perhaps other types of waste as well. We may need a compatible demolition debris site, for instance. The Facility Siting Board has set siting criteria for solid waste disposal facilities. These criteria directly reflect DEP's standards and criteria, because ultimately, the agency becomes the applicant before the DEP. The process proceeds first by the selection of a site by the agency, with the Facility Siting Board making that determination. Second, an application is prepared for the DEP, as we put on our "developer hat" Finally, assuming that we receive a permit, then the agency's mandate is to build and operate a waste disposal facility. Although this is a public activity, it probably would be assigned to a private operator. There is no point in developing that capacity as a state activity when there are able private operators who already know how to do this.

## **Lessons from initial efforts to site**

The process has now spanned the course of about a year and a half. In the summer of 1990, we sent a letter to almost 200 cities and towns in a search area to notify local officials of our site selection process. Probably about 198 of those letters went directly into the trash can. We made efforts throughout the next six months to involve interested people and to make them aware of the need for and the process of siting such a facility. Probably the biggest mistake was that we failed to identify the people to whom we needed to talk early on. By the time we finally got to them, they were opposed to whatever we had in mind. It did not matter what it was. We still do not know how to achieve this early communication. This is a difficult task that we continue to grapple with.

The process then proceeded along traditional lines. We held public meetings. We conducted a technical screening process, which was traditional and appropriate, and also expensive. We finally listed 25 sites in the central area of the state and 23 in the southern area. That was when lots of noise developed. An on-site testing process this past summer allowed us to further define and narrow the sites. A hearing process with the Facility Siting Board gathered information, primarily from the communities themselves. They decided that we needed to know a great deal more about their site than we did. This was probably our second mistake. We did intend to know more, but we did not intend to know it at that time. The towns made that decision for us. In many cases, information that they provided was absolutely helpful to us and told us that the site was not appropriate to continue to consider.

The problem in the process was that the public perception and the agency perception were at opposite ends of the spectrum. The agency knew we were in the beginning of a process. We had months and years to go to before obtaining a permit. The towns saw the process as essentially ending when a site was chosen for further consideration. They were not willing to let that process remain untouched by their ability to affect it. The result was that as of mid-January of 1992, the Facility Siting Board determined that none of the five potential candidates for the facility had the prospect of being able to proceed through the process and receive a permit.

We now must go back to the drawing board. We have learned that the amount of information available at a given time is a major issue. We should have had more; at some point we expected to have more. Because the towns were able to give us some conclusive information earlier in the process than anticipated, they certainly affected the outcome. It was one of the very good things about the process. It kept us from making a mistake, it kept us from going ahead with a site that ultimately was not going to work. There is probably a difference here between a public sector and a private sector approach to this process. The private sector may well have felt that, given its investment of time and money, even though a site began to look less attractive, too much had been invested to abandon it. It might have somehow wiggled around and had a facility engineered to fit the site. A public agency was able to say that if a site will not work, then drop the site from consideration. We did not make the mistake of compromising the site and its hydrogeology.

The process has shown us that, while we followed a traditional approach in terms of time, money and process, perhaps we have to reconsider that approach. We looked at 6,000 square miles in

two search areas in the State of Maine, a fairly significant amount of land. We found very little appropriate land in that 6,000 square miles. It is certainly a lot harder to site a facility such as this in the State of Maine as compared to a dryer state with less rainfall and a lower water table. I have been told that frequently. This is not the kind of facility you can just walk out the door and have several candidates for. It is a lot tougher than that.

The other area where we need to change our focus is communications. It sounds very facile and overly simplistic to say we do not talk to each other carefully enough or frequently enough. But that is certainly an issue for which we still do not know the answer: How do you talk to people? How do you have a dialogue with them? How do you have a reasonable conversation with them? By the time they hear that their community may be on our list, it is too late. I cannot get their attention then and they do not trust me when I do. Our message needs to be improved; our rationale has to be delivered better.

We still have time to make a measured decision about waste disposal, although I do not think that we have a generation's worth of time. We have to communicate to people why we need to have disposal facilities, and why we cannot just recycle everything tomorrow. The media, frankly, has not helped a lot. They would much rather write about the theater of an event than why the state needs a disposal facility. I even had an editor say to me, "Gosh, I hope you keep coming back because it really sells papers." Moreover, he had us confused with the low-level nuclear waste people!

The process so far has helped us learn a number of valuable pieces of information. We have not yet made a serious mistake in siting a facility. We will continue to refine our capacity needs. We do have more time now than we did a year ago. Thanks to expansion in the private sector, we have a place for incinerator ash, which is the major disposal material. Unfortunately, we do not control where it is going, and, for any number of reasons, we could see an abrupt change in that "solution." Some sort of physical problem could develop at a site that would preclude its use. The DEP might not allow expansion of one of the areas that is currently being used. A neighboring state, which is currently serving as a back-up, could decide they do not want out-of-state waste, and, either by price or other prohibition, turn Maine's waste back here. Any of these could immediately cause my phone to ring off the hook and cause questions to be raised about why I had not carried out my responsibility.

We must continue to look for a better way to come up with, at least, a contingency plan where we can receive a permit and be prepared, if necessary, to build this kind of facility. We probably should be looking at someone who has a similar problem to work with us to solve the problem on a mutual basis. That might be a privately-owned business. We are soliciting suggestions from people who have been involved in the process at the local level on more fundamental changes. Perhaps I am too focused on results. But, the agency was created to achieve results both in waste reduction and recycling and in siting. I think it would be irresponsible not to make those the focus of our activities. I do believe it can work. I believe it has to work in a manner that is acceptable to the public.

I was recently asked if we ultimately would come to coercion. I do not believe that can occur. We need to achieve some consensus and that is perhaps the most difficult issue. The technical aspects can be worked out. Whether or not the trust and confidence and basic consensus can be achieved in any process is still open to question. We will do everything we can to achieve those ends, and we look forward to working with those interested in helping us.

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